

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,
Plaintiff

NETFLIX, INC.,
CHROME MEDIA, LLC, f/k/a
SYNTHESIS FILMS, LLC,
LAURA RICCIARDI, and
MOIRA DEMOS,

Case No. 19-CV-484

Defendants.

MOTION FOR ORDER IMPOSING SANCTIONS

Plaintiff, by and through his undersigned counsel, hereby respectfully moves the Court for sanctions against Defendant Netflix, Inc., pursuant to the Court's inherent authority, for the reasons set forth and as explained further in the supporting memorandum filed contemporaneously, and further based on the facts set forth in the Declarations of Debra L. Bursik and April Rockstead Barker, also filed contemporaneously. Plaintiff requests that the Court enter an order barring Netflix, Inc. from contesting actual malice in these proceedings, or such other sanction as the Court may deem appropriate under the circumstances.

Dated this 24th day of September, 2021.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiff, Andrew L. Colborn

By: /s/ George Burnett
George Burnett

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CERTIFICATION

I certify that I spoke with Leita Walker, counsel for Netflix, Inc., and Kevin Vick, counsel for Chrome Media, Laura Ricciardi, and Moira Demos, in a good-faith effort to resolve, limit and/or streamline discovery issues in dispute on September 16, 2021, by telephone.

It is my understanding based on that conversation that Netflix has dropped its insistence that an ESI protocol would be required before discovery could be produced by it, but it maintains that it will produce discovery responsive to Plaintiff's June 2021 requests, which were intended to request the documents described in Netflix's June 2021 initial disclosures, "on a rolling basis" that is likely to take until mid-October.

In the meantime, Netflix has served discovery requests asking for information the details of which are likely to be disclosed in the discovery served on it. It is my understanding that Netflix will consider a request for an extension as to the responses for specifically articulated reasons, but that Netflix will not agree to extensions based on its own discovery delays or until it concludes its production.

Based on the totality of the circumstances, including the lack of any further document production since a few documents were produced the day after the September 16, 2021 meet-and-confer conference; based on the pattern of delay and denial of discovery that Plaintiff's counsel has been met with during the time this case has been pending, which is now more than two years and nearly three years; and based on the email message sent by Netflix after the meet-and-confer that characterizes Netflix's past conduct with respect to discovery as appropriate; it is unfortunately apparent to Plaintiff's counsel that Netflix is not willing to acknowledge that it has and continues to unreasonably delay Plaintiff's access to discovery in a way that appears intended to prejudice Plaintiff in these proceedings, particularly with respect to Defendants' impending motions for summary judgment.

/s/ April Rockstead Barker
April Rockstead Barker